

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STEVEN TRUBOW, an individual, MMAS
RESEARCH, LLC, a Washington limited
liability company,

Plaintiffs,

v.

DONALD MORISKY and SUSAN
MORISKY, husband and wife, PHILLIP
MORISKY, an individual, MARTY
MORISKY, an individual, and MORISKY
MEDICATION ADEHERENCE
RESEARCH, LLC, a Nevada limited liability
company.

NO.

(KING COUNTY SUPERIOR COURT
CAUSE NO. 19-2-19872-9)

NOTICE OF REMOVAL BY DONALD
MORISKY
(Exclusive Copyright Jurisdiction)

COMES NOW defendant DONALD MORISKY and pursuant to the exclusive federal jurisdiction over copyright and trademark counterclaims under 28 USC §1338 and the right to remove under 28 U.S.C. §1454(a) based on copyright counterclaims, files this Notice of Removal from the King County Superior Court, State of Washington (the State Court Action), to the United States District Court for the Western District of Washington at Seattle, Washington.

I. COPYRIGHT COUNTERCLAIMS ARE BASIS FOR REMOVAL

This action was commenced on July 27, 2018, in King County Superior Court. Donald Morisky and Susan Morisky were served in Nevada on or about August 9, 2019, under a sixty day summons.

On October 14, 2019, defendant Donald Morisky and Susan Morisky filed an Answer in the State Law Action. In that Answer, Donald Morisky asserted copyright counterclaims, over which federal courts have exclusive jurisdiction. This case is removed based on those counterclaims.

28 U.S.C. §1338 provides, in pertinent part:

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

(emphasis added). 28 U.S.C. §1454 provides in pertinent part:

(a) In general. --A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) Special rules. --The removal of an action under this section shall be made in accordance with section 1446 , except that if the removal is based solely on this section--

(1) the action may be removed by any party; and

(2) the time limitations contained in section 1446(b) may be extended at any time for cause shown.

(emphasis added)

A copy of this Notice is being concurrently filed in the state court proceeding in King County Superior Court, Cause No. 19-2-19872-9.

In support of this Notice of Removal, defendant Donald Morisky, additionally states as follows:

State Court Record

A copy of the Answer filed on October 14, 2019, containing Donald Morisky's Copyright Counterclaims for which federal jurisdiction is required, and a copy of the Complaint in the State Court Action have been separately filed as "attachments" in accordance with LCR 101

Defendant will additionally file independently copies of all additional records and proceedings in state court required by LCR 101 with counsel's verification that they are true and complete copies of all the records and proceedings in the state court action.

There are pending motions to dismiss in state court based on lack of Washington state jurisdiction as to certain defendants, including Susan Morisky, but not including Donald Morisky. Pursuant to LCR 101, it is acknowledged that pending state court motions will need to be refiled in this court.

No jury demand was filed in the State Court Action.

Supplemental Jurisdiction and Venue

This Court has original jurisdiction over this matter pursuant to 28 USC §1454 and §1338 by virtue of the copyright and trademark counterclaims. The Court has supplemental jurisdiction over Plaintiffs' state law claims and Defendant Morisky's additional state law counterclaim pursuant to 28 U.S.C. § 1367(a) because they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

Venue is proper in this Court because the State Court Action is pending in western Washington. See 28 U.S.C. § 1441(a).

Intradistrict Assignment

Pursuant to LCR 101(e) and LCR 3(e), because Plaintiff MMAS Research, LLC is a Washington Corporation with an identified Washington address in King County, Washington, assignment is therefore appropriate to the Seattle Division.

DATED this 17th day of October, 2019.

s/ Christopher Mason

Christopher Mason, WSBA #14442

SMYTH & MASON, PLLC

1325 Fourth Avenue

Suite 940

Seattle, WA 98101

(206) 621-7100

cmason@smythlaw.com

Attorney for Defendant Donald Morisky